

1 CCAEJ simply is unconcerned with that issue.

2 Q. Have you ever seen any information involving the State of
3 California's participation in causing any of the contamination
4 here?

5 A. Just in some recent briefs that were submitted.

6 Q. And have you formed an opinion as to whether the state has
7 any responsibility for Rialto's groundwater?

8 A. No, I haven't.

9 Q. Is that something you're looking into?

10 A. I'm sure it will come out in the hearing.

11 Q. Is that something you're looking into?

12 A. No.

13 Q. Why not?

14 A. We don't investigate polluters.

15 Q. You have done no investigation into the polluters; is that
16 right?

17 A. Beyond public record, no.

18 Q. What public record is that, just what the regional board
19 writes?

20 A. It's any records we went through including the County of San
21 Bernardino.

22 Q. But if the regional board or County of San Bernardino didn't
23 say someone is a polluter, CCAEJ would not investigate
24 them; correct?

25 A. Correct.

26 Q. So you're relying on whatever the regional board or the
27 county tells you in terms of who the polluter is?

28 A. We're relying on public record.

Q. But the public record you're relying on is whoever the county
and the regional board tells you is a polluter?

A. No. [¶] I think I stated earlier it's the EPA. There's quite a
record on that.

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Q. But if EPA, the regional board, and the county do not identify an entity as a polluter, CCAEJ is not going to go do their own investigation of that entity; isn't that right?

A. If it is not in public record from any agency, then I'm not going to limit ourselves to those particular agencies. We do not do our own investigation.

Q. But when you say "if it's not in public record," what you mean is if the agency itself in some public statement hasn't identified someone as a polluter, CCAEJ isn't going to do an independent investigation of any other entity; right?

A. As I've said previously, we are not doing our own independent investigation. We would rely on what's in public record which includes what other parties submit.

* * *

Q. Did CCAEJ go out and look at the public records, building permits, air permits, water permits, for the different companies that operated on the 160-acre parcel in an effort to determine who all the polluters were from that parcel?

A. I didn't, but I can't say that one of my staff didn't.

Q. Did anybody do it at your direction?

A. No.

Q. Never told anybody go do that, did you?

A. No.

Q. And you didn't personally do it; right?

A. Correct.

Q. Did Mr. Diaz go do that?

A. He might have.

Q. Do you know if he did?

A. I don't.

Q. Do you know if anybody at CCAEJ did that kind of investigative work to determine who the different polluters were on the 160-acre parcel?

A. I don't.

Q. Let me ask you this: If you didn't do it, why not?

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A. I wouldn't do it because it's not my area of responsibility. [¶] Davin [Diaz] may have.

Q. But you don't know he did?

A. I don't know.

Q. Does CCAEJ view one of its responsibilities here to go dig through all of the public records, building permits, air permits, water permits, and make its own independent assessment of who a polluter is on the 160-acre parcel?

A. No.

* * *

Q. Finding the precise source of how the perchlorate got into the groundwater in Rialto is not your area of responsibility; right?

A. Correct.

Q. Is that anyone's area of responsibility at CCAEJ?

A. No.

Q. Am I right, then, in the state board proceeding -- it's coming up in about a month -- CCAEJ is not planning on putting on a presentation about the evidence that identifies the specific polluters that it believes caused perchlorate contamination in Rialto?

A. That's not the focus of our efforts.

* * *

Q. The sentence here in the press release says, "CCAIEJ will now provide evidence on why the polluters should clean up the perchlorate contamination they created."

A. Correct.

Q. What evidence does CCAEJ intend to present on why the polluters should do all those things you just said?

A. I think it goes back to the principle if the polluters created the contamination, they should be responsible for cleaning it all up. It doesn't go to who. [¶] We, quite frankly, don't care who the polluters are, just want to make sure the polluters bear the cost of the cleanup and not the taxpayers.

Q. Thanks, I think I got it. [¶] So who the polluters are is an area that at least at this point you don't intend to put on evidence as to who they are; right?

1 A. No. [¶] I mean, I don't know what evidence that's not
2 already in the public record.

3 Q. You're going to make policy arguments about why someone
4 who's already been identified by the regional board or EPA
5 as a polluter, why they should pay; right?

6 A. Our focus is on public policy establishing basis for the
7 polluters to pay for the cleanup of what they created.

8 *Id.*, 120:6-122:7, 124:2-125:10, 126:13-25, 200:20-201:22.

9 Likewise, CCAEJ does not intend to present any evidence that the levels of
10 perchlorate in Rialto or Colton have caused any adverse health effect, despite its
11 numerous publications and quotes on the subject. Ms. Newman admits knowing no
12 evidence of any increase in thyroid disease or any other injury caused by perchlorate in
13 the drinking water. *Id.*, 160:12-161:9, 179:20-180:6. All Ms. Newman points to, again, is
14 her political view of a "threat" to human health and that, on that basis alone, there should
15 be cleanup to a "zero" level of perchlorate.

16 Q. And there's never been one study done that one person even
17 got sick in Rialto for consuming perchlorate-contaminated
18 water; isn't that right?

19 A. I think there's sufficient evidence to show that perchlorate
20 poses a threat to public health, and as such, should be taken
21 out of drinking water.

22 Q. That basis alone, at whatever the cost, every molecule of
23 perchlorate should be taken out of the drinking water in
24 Rialto; right?

25 A. We believe corporations don't have a right to contaminate a
26 public common water resource, and that if you create the
27 problem, whoever that polluter is, you need to take it out of
28 that water.

Q. And therefore, every molecule of perchlorate contamination
needs to be taken out of the water in the city of Rialto; right?

A. If at all technically able to do so.

Q. And if it's not technically able to do so, at whatever expense,
water without a molecule of perchlorate in it should be
provided to all residents of Colton and Rialto; isn't that right,
Ms. Newman?

A. That's right.

1 *Id.*, 190:15-191:11.

2 **C. This Testimony Demonstrates That Environment California and**
3 **CCAIEJ Have No Relevant Evidence To Add To These Proceedings**

4 Despite requesting party status, this testimony reveals that Environment California
5 and CCAIEJ have no "relevant testimony and evidence" to offer on any of the four
6 relevant subjects of these proceedings – "[1] legal responsibility for site investigation and
7 remediation; [2] the technical evidence justifying site investigation and cleanup; [3] the
8 feasibility and propriety of cleanup and remediation requirements; and [4] appropriate
9 cleanup standards for protection of public health and beneficial uses of waters of the
10 state." Second Amended Notice of Public Hearing.

11 Whatever other subject these "parties" intend to address will amount to nothing
12 more than a substantial waste of time, resources, and energy of those accused of
13 responsibility, the other proper parties in this proceeding, and the State Board.

14 **XVIII. A REVIEW OF THE REGIONAL BOARD'S ACTIONS REVEALS STARTLING**
15 **MOTIVATIONS THAT SHOULD BE ADDRESSED BY THE STATE BOARD**

16 From the beginning of their investigation, certain staff members of the Regional
17 Board have a clear motive: identify evidence, no matter how implausible, that supports
18 claims against Goodrich (and a few others) and ignore facts that point to the real culprits
19 of the perchlorate contamination in the Rialto-Colton area. When it initiates an
20 investigation, the Regional Board must proceed cautiously, diligently, and fairly against
21 all potential sources of the contamination. In this matter, however, these staff members
22 have failed to follow the Regional Board's mandate. Each staff member of the Regional
23 Board who has worked on or supervised this investigation, Gerald Thibeault, Kurt
24 Berchtold, Robert Holub, Ann Sturdivant, and Kamron Saremi, has misrepresented the
25 facts and ignored critical evidence. The frequency of these lapses suggests more than
26 mere coincidence, ignorance, or harmless error but rather that these staff members of
27 the Regional Board, from the beginning of its investigation, deliberately intended to craft
28 a case against Goodrich (and just a few others) and to deflect inquiry into their own

1 culpability. As a result of these apparent biases, the Regional Board staff who will testify
2 in this State Board proceeding will not provide complete and accurate testimony. Their
3 testimony, largely based on hearsay and influenced by ulterior motives, is not credible.

4 **A. Gerald Thibeault and Kurt Berchtold**

5 The proper mandate for the Regional Board in this administrative proceeding is
6 not victory against Goodrich, but to establish the actual facts and reach a just resolution,
7 even if those facts show that Goodrich is not liable for the perchlorate contamination.
8 Under the leadership of Gerald Thibeault and Kurt Berchtold, the Board's Executive
9 Officer and the Assistant Executive Officer, the Regional Board staff pursued this action
10 against Goodrich despite fact and scientific evidence that exonerates Goodrich. And the
11 Regional Board's staff limited its investigation into one of the most significant source of
12 perchlorate contamination in the entire Basin because Thibeault, Berchtold, Holub, and
13 other members of the staff of the Regional Board were themselves directly responsible
14 for regulating fireworks companies that handled and dumped perchlorate on the 160-
15 acre site. Consequently, their efforts to deliberately overlook key evidence has
16 undermined the credibility of the staff's investigation and tainted the Advocacy Team's
17 ability to mete out justice in a dispassionate manner.

18 As a public official leading a governmental agency with significant authority,
19 Thibeault admitted that the Regional Board's staff has a responsibility to be fair.
20 According to Thibeault, the Regional Board's staff must be unbiased, and it must not
21 have a stake in the outcome. Thibeault Dep., 256:16-257:13. In fact, if the Regional
22 Board's staff learns of exculpatory evidence that helps the defendant, Thibeault believes
23 that the staff has an obligation to disclose it. *Id.*, 258:5-259:5. Of course, Thibeault
24 stated that he believes that when exculpatory evidence undermines a particular
25 allegation against the defendant, the Regional Board's staff should not make that
26 allegation. *Id.*, 490:15-491:2.

27 Yet, despite his rhetoric, Thibeault deliberately avoided determining whether
28 exculpatory evidence existed against Goodrich. Thibeault never asked his staff if

1 exculpatory evidence undermined the allegations contained in the CAO. *Id.*, 491:9-12.
2 And to the extent he relied on Kurt Berchtold to challenge the staff's investigative
3 findings, Thibeault admitted that he never asked him whether exculpatory evidence
4 existed, and he was not aware whether Berchtold questioned the staff about the
5 possibility that sources other than Goodrich caused the perchlorate contamination in the
6 Rialto-Colton basin. *Id.*, 491:13-492:12.

7 Throughout this investigation, Thibeault was more concerned about his own self-
8 interest than the public's interest. On June 7, 2002, Thibeault and his staff met with
9 then-State Senator Nell Soto and Barry Groveman, counsel to various water purveyors
10 in the Inland Empire, about the Regional Board's investigation. Thibeault admitted that
11 Senator Soto and Mr. Groveman were very aggressive at the meeting. *Id.*, 270:21-
12 271:5. Kamron Saremi who also attended the meeting, testified that Senator Soto
13 threatened to have the Governor fire Thibeault because of his, and his staff's, failure to
14 move more quickly to identify the responsible parties for perchlorate contamination.
15 Saremi Dep. 110:25-113:9. See Ex. 20074, p. 1. Obviously affected by even the
16 prospect of meeting with Senator Soto, Thibeault had the day before signed the
17 Regional Board's CAO against Goodrich and Kwikset Corporation.

18 Even then, Thibeault had no factual basis upon which to issue the CAO against
19 Goodrich. In an email to the Members of the Regional Board written four days after the
20 meeting with Senator Soto, Thibeault misrepresented critical facts. The email claimed
21 that fireworks companies that operated on the same land that Goodrich occupied "were
22 just fireworks assembly companies, and that no actualy [sic] manufacturing took place
23 where perchlorate-containing liquids would be have been present." Ex. 20074, p. 2.
24 This statement is simply false. Thibeault testified at deposition that his staff knew a
25 month earlier about the McLaughlin Pit where fireworks companies (which had been
26 engaged in one of the largest fireworks manufacturing empires on the West Coast for
27 more than 20 years) dumped thousands of pounds pyrotechnic waste that had been
28 generated from the companies' manufacturing process. Thibeault Dep., 99:6-100:21.

1 In addition to providing false information to state officials, Thibeault also
2 misrepresented the Regional Board's investigation to Senator Soto. In a letter drafted
3 on the same day as the June 7, 2002 meeting, Thibeault wrote to Senator Soto that the
4 Regional Board was unaware that other companies handled or used perchlorate. *Id.*,
5 181:13-20. Given that the Regional Board staff knew from its own files that pyrotechnic
6 manufacturing waste containing perchlorate had been dumped in the McLaughlin Pit
7 since 1971, Thibeault's statement to Soto was at best reckless. *Id.*, 181:21-24.
8 Thibeault included inaccurate information in the letter by claiming that pyrotechnic
9 companies that operated on the site were not involved in the "manufacturing of fireworks,
10 which is the type of activity that likely would have resulted in a release of perchlorate."
11 This statement is controverted by the Regional Board's own files – files that neither
12 Thibeault nor his staff apparently had bothered to review when the letter was written. *Id.*,
13 184:2-185:2.

14 Thibeault provided these false statements to the Regional Board Members and to
15 an elected official out of a concern for his job. Thibeault knew from his meeting with
16 Senator Soto that the Regional Board had to initiate a proceeding against somebody, in
17 this case Goodrich (and a few others), right away – even if that meant ignoring the real
18 sources of contamination – in order to spare his own career. In his email to the Regional
19 Board Members, Thibeault stated that further investigation of the real sources would
20 "muddy the waters and possibly give Goodrich or Kwikset a reason to delay...." Ex.
21 20074, p. 2. Because of Senator Soto's threats, Thibeault deliberately ignored any
22 further investigation into the true source of perchlorate contamination in the Basin, losing
23 another opportunity to discovery the companies responsible for the McLaughlin Pit, the
24 only confirmed source of perchlorate at the 160-Acre Parcel.

25 Not only was Thibeault most interested in maintaining his job, he and his chief
26 assistant, Kurt Berchtold, focused the Regional Board staff's investigation on Goodrich
27 and Kwikset out of a concern that their and the staff's negligent oversight of the
28 McLaughlin Pit would be revealed. The Regional Board staff, including Berchtold and

1 Thibeault, was aware that Pyrotechnics dumped explosive powder that it had
2 manufactured in a swimming pool that had a 12,000 gallon capacity. Berchtold Dep.,
3 106:9-14. In fact, Berchtold personally witnessed fireworks companies using that pool
4 as a disposal pit for fireworks manufacturing waste and had written an on-site inspection
5 report about it in 1983. *Id.*, 176:3- 179:17. According to the Regional Board's own
6 reports, Pyrotechnics tried to keep the pyrotechnic waste covered with water up to one
7 inch from the top of the pool. *Id.*, 106:22-107:5. These types of hazardous wastes
8 compromised the swimming pool's plastic membrane and consequently, the liquid in the
9 pool seeped through the swimming pool's porous gunite construction and into the
10 surrounding soil below. See English Dec., ¶ 49-53.

11 Pyrotechnics' practice to have water so close to the top of the McLaughlin Pit
12 caused perchlorate-contaminated water to spill over the top of the pool after any
13 significant rainfall. Berchtold himself admitted that he personally witnessed an overflow
14 of perchlorate-contaminated water from the McLaughlin Pit, and documented it in a
15 Regional Board report. Berchtold Dep., 179:4-17. Despite the seriousness of this
16 offense, the Regional Board staff did nothing about the violation. *Id.*, 180:22-23.

17 Like the overflow violation that the Regional Board ignored, it also overlooked and
18 failed to investigate other critical and harmful errors in managing the McLaughlin Pit. For
19 instance,

- 20 • According to the December 1973 letter from the Regional
21 Board to Pyrotechnics, quarterly monitoring reports were due
22 from Pyrotechnics in 1973 but were not received. *Id.*, 113:20-
23 115:25. Berchtold is not aware if the Regional Board
24 investigated whether Pyrotechnics failed to submit quarterly
25 monitoring reports between 1971 and 1987; although the
26 Water Board's files demonstrate repeated reporting
27 violations. *Id.*, 116:2-9. Berchtold never investigated why the
28 Regional Board staff refrained from citing Pyrotechnics for
these violations. *Id.*, 118:23-119:3.
- The Regional Board staff knew that 3,000 gallons of industrial
wastes were being discharged per day into a pool that had a
capacity to only hold a total of 12,000 gallons. *Id.*, 142:25-
144:14. Berchtold offered no explanation whether he or other
Regional Board staff inquired about where that excess water
went. *Id.*, 147:2-7.

- Despite evidence that suggests Pyrotronics illegally dumped their hazardous waste, Berchtold does not know whether he or the Regional Board investigated whether Pyrotronics complied with its WDR, requiring that waste be hauled by a certified waste hauler. *Id.*, 163:18-164:5.
- When Pyrotronics could not dispose of the hazardous and explosive sludge that remained after the pool closed, the Regional Board staff knew that sludge remained in the pool filled with water. *Id.*, 213:11-21. And, of course, the Regional Board staff never brought an enforcement action against Pyrotronics. *Id.*, 216:11-16; see also *Id.*, 216:25-217:13.

Berchtold and Thibeault knew, or should have known, about the significant problems with the McLaughlin Pit, because either the Regional Board's own files pointed to the McLaughlin Pit as the source of contamination in the Basin and they, Berchtold and Thibeault, along with other senior staff, were personally involved in its oversight during its 16 years of operations. For example:

- According to the December 1973 letter from John Zasadzinski to Pyrotronics, quarterly monitoring reports were due from Pyrotronics on July 1973, but were not received. *Id.*, 113:20-115:25. This constituted a clear violation of the requirements imposed by the Regional Board in connection with Pyrotronics' waste disposal operations.
- An October 27, 1976 letter from Mr. Silva to Pyrotronics notes that monitoring reports were due in July and October, and a report had not been received since April 9, 1976. *Id.*, 116:21-117:17. This constitutes another violation of the Regional Board's requirements.
- A September 13, 1978 memo from former Regional Board member, Steve Herrera, indicates that Pyrotronics is in violation of their waste discharge requirements. *Id.*, 158:4-159:17, 160:8-11. Mr. Berchtold does not recall asking anyone to follow up on this violation. *Id.*, 160:15-17.
- According to a May 6, 1980 inspection report, Pyrotronics failed to submit three quarterly monitoring reports by that time. *Id.*, 164:10-165:4, 165:24-166:12. The report also notes that the freeboard of the swimming pool is 9 inches, which would have been a violation of the Waste Discharge Requirements. *Id.*, 167:23-168: 14. Mr. Berchtold does not know of any penalty that was assessed against Pyrotronics for that violation. *Id.*, 168:15-169:1.
- A November 1981 report illustrates additional reporting violations by Pyrotronics, including a failure to submit the July

1 and October reports due to the Regional Board. *Id.*, 170:24-
2 171:25.

- 3 • A report by Mr. Berchtold of a March 3, 1983 inspection of the
4 Pyrotronics Manufacturing facility reports that the pool had no
5 freeboard. *Id.* 176:3-177:14, 179:4-13. The report also
6 states that rainfall had caused an overflow, which Mr.
7 Berchtold estimated to be about 5 gallons, after three days of
8 intense precipitation. *Id.* 179:4-17. Although this was a
9 serious violation, Mr. Berchtold does not know what, if
10 anything, was done by the Regional Board to remedy the
11 violation. *Id.* 180:9-23. Mr. Berchtold's recommendation, as
12 noted on the report, was to send a letter confirming
13 inspection. *Id.* 181:3-180:23. And when asked at his
14 deposition, Berchtold, did not recall why he failed to take any
15 action stop this from occurring. *Id.* 183:4-6.

16 Despite the evidence pointing to the real culprits, neither Thibeault nor Berchtold
17 ever once directed the Regional Board's investigative team to take action to stop the
18 repeated violations of the WDRs; violations that resulted in gross contamination of the
19 groundwater. Thibeault's and Berchtold's silence speaks volumes about their concern
20 over the Regional Board staff's complicity in the perchlorate contamination that resulted
21 from the McLaughlin Pit.

22 **B. Robert Holub**

23 The April 6, 2007 submission of the Advocacy Team identifies six topics on which
24 Mr. Holub intends to testify:

- 25 • "Chilean nitrate does not appear to be a source of perchlorate
26 at the 160-acre site";
- 27 • The perchlorate plume emanating from the property adjacent
28 to the Mid-Valley Landfill is distinct from the plume emanating
from the Property";
- "The general characteristics of perchlorate";
- "The Regional Board's regulatory history regarding the
'McLaughlin Pit' ";
- "Data and findings from investigations of perchlorate and
TCE discharges at and from the Property"; and
- "Impacts of perchlorate and TCE on the municipal water
supply".

Mr. Holub is not an expert in any of these subjects. Likewise, Mr. Holub lacks

1 personal knowledge of all but one of these issues. The notable exception is the history
2 of the Regional Board's "regulation" of the McLaughlin Pit. As discussed below and
3 elsewhere in this Brief, the Regional Board has substantially contributed to the
4 perchlorate contamination in Rialto due to its violations of California and federal law, and
5 general mismanagement and disregard for the McLaughlin Pit as a source of perchlorate
6 contamination.

7 Each of the topics on which Mr. Holub is anticipated to testify is addressed below.

8 **1. Chilean Nitrate as a Source of Perchlorate Contamination**

9 Mr. Holub has no percipient knowledge of the historic use of Chilean fertilizer in
10 Rialto. Holub Dep., 809:21-810:4. Mr. Holub is not an expert on this subject either.
11 Without any reservation, Mr. Holub admits he is not "an expert" on "Chilean nitrate
12 fertilizers" in general, or the issue of whether Chilean nitrate is a source of perchlorate on
13 the 160-acre site. *Id.* 809:16-20; 816:16-20.

14 Mr. Holub's concession is appropriate. His deposition testimony confirms his lack
15 of expertise.

- 16 • Mr. Holub is not an expert in agriculture. *Id.* 810:22-23.
- 17 • He is not an expert in the distribution of fertilizers in
18 agriculture. *Id.*, 810:24-811:1.
- 19 • He does not know whether any citrus groves or other
20 agriculture existed above the 160-acre parcel that used
Chilean nitrate with perchlorate going back to the 1920s. *Id.*,
810:10-14.
- 21 • He has not talked with anyone who lived in Rialto going back
22 to the 1920s to try to determine where Chilean fertilizers were
used. *Id.* 811:2-6.
- 23 • He has not talked with any farmers in Rialto about whether
24 they have any information about where Chilean fertilizers
were used. *Id.* 811:7-10.
- 25 • He has not talked with any farmers in Rialto about the
26 location of farms in the Rialto-Colton basin. *Id.* 811:11-13.
- 27 • He does not know whether Chilean fertilizer was used with
28 any crops other than citrus in the Rialto area, and he has
done no investigation of that subject. *Id.* 811:20-812:5.

- He cannot identify any specific report or document that identifies the concentrations of perchlorate in Chilean nitrate or that supports any conclusion on this subject. *Id.*, 812:12-813:21, 816:6-817:4.
- He does not know how much Chilean nitrate was brought into California generally, or Rialto specifically, since the 1920s. *Id.* 817:5-13.
- He does not know the amount of acreage in the Rialto-Colton basin over which Chilean fertilizer was used. *Id.* 822:22-823:5.
- He does not know about historic agricultural wells in Rialto, including how many there were, how they were constructed, or how they were closed, although he admits such wells can be a source of groundwater contamination. *Id.* 823:15-824:9.
- He has not researched the uses of Chilean fertilizer in agricultural areas outside of the Inland Empire, including uses that led to perchlorate contamination above a hundred parts per billion. For example, he has not reviewed studies by the Environmental Protection Agency at the Apache Powder Superfund site that found measured groundwater contamination as high as 670 parts per billion as a result of historic use of Chilean fertilizer. *Id.* 824:23-828:20.
- His knowledge of whether citrus groves existed at or hydrogeologically upgradient from the property is limited to his review of two photographs, one from 1930 and one from 1938. *Id.* 828:21-830:1, 834:10-16. And only the 1930 photograph was included in the Advocacy Team's record submission on March 27, 2007. *Id.* 830:2-12.
- He does not know when the use of Chilean fertilizer ceased in Rialto, or if is still being used as of today. *Id.* 938:23-939:4

In summary, Mr. Holub cannot address the extent to which Chilean fertilizer is a source of the perchlorate contamination in Rialto. This includes the Advocacy Team's apparent contention that this source is only responsible for only "low concentrations" of contamination. Mr. Holub lacks the expertise to support that or any other conclusion on this subject.

2. The Physical Distinction of the Perchlorate Plume Emanating from the Property Adjacent to the Mid-Valley Landfill and from the 160-acre site

This topic requires little attention. After detailed examination, Mr. Holub conceded that, contrary to the statement in the Advocacy Team's April 6th submission, he would

1 not offer a scientifically supportable opinion that there are two "distinct" perchlorate
2 plumes. Rather, he is only going to report on well data.

3 Q. You are not going to offer a scientifically supportable
4 conclusion that there is a separate plume coming off the Mid-
5 Valley landfill distinct from the Mid-Valley landfill; is that
6 correct?

7 MS. NOVAK: Calls for a legal conclusion. Calls for expert opinion.

8 A: If we are -- if we both have the same definition of
9 "scientifically supportable," I believe the answer is yes. I'm
10 going to use the data from the existing wells out there.

11 Q. You're just going to report on well data; right?

12 A. Yes.

13 * * *

14 Q. You're not going to offer a scientific opinion in these
15 proceedings before the state board that there are two
16 independent distinct plumes, one from the 160-acre parcel
17 and one from the landfill; correct, sir?

18 MS. NOVAK: Vague and ambiguous.

19 A: Not a scientific analysis, no.

20 Q. Not one that would be supportable in like a court of law;
21 right?

22 MS. NOVAK: Calls for a legal conclusion.

23 A: I'm not sure what would be supportable, but I don't believe
24 so.

25 MR. DINTZER: Yeah.

26 Q. I mean, you understand in a court of law, it would have to be
27 a scientifically based opinion. You understand that. I'll tell
28 you that's what it would have to be; okay? [¶] So assuming
it had to be that, you're not offering that; right?

A. Correct.

Id., 1052:3-16, 1062:1-20; *see generally Id.*, 1024:20-1062:20.

3. The General Characteristics of Perchlorate

Mr. Holub's deposition testimony reveals that he has no expert knowledge of perchlorate. For example, he does not know the most basic aspects of perchlorate

1 chemistry or its fate and transport in any environment.

- 2 • Mr. Holub does not know how perchlorate is chemically
3 formed. *Id.* 835:22-836:2.
- 4 • He does not know how perchlorate salts are manufactured.
5 *Id.* 836:23-837:4.
- 6 • He does not know the solubility rate of perchlorate. *Id.* 837:6-
7 7.
- 8 • He does not know the absorption rate of perchlorate in soil or
9 silty materials such as the conditions found on the 160-acre
10 parcel. *Id.* 837:8-10, 943:16-23.
- 11 • He is not "sure" that perchlorate is a negatively charged ion (it
12 is). *Id.* 837:16-21.
- 13 • He does not know the degradation rate of perchlorate in
14 groundwater in anaerobic or aerobic environments, or how it
15 compares with volatile organic substances such as
16 trichloroethylene. *Id.* 838:1-11.

17 Mr. Holub is simply in no position to offer expert testimony about these or any
18 related subjects.

19 4. The Regional Board's Regulatory History regarding the 20 McLaughlin Pit

21 In contrast to the other designated subjects, Mr. Holub knows about the so-called
22 "regulatory history" of the McLaughlin Pit. In 1987, he was a senior engineer and the
23 "head of groundwater investigations" at the Regional Board, and had lead responsibility
24 for application of the "Subchapter 15" regulations at the time the Regional Board was
25 dealing with the McLaughlin Pit. *Id.*, 1033:17-1035:25.

26 As of his deposition on April 9, 2007, Mr. Holub had not yet determined what
27 information he will present on this subject (despite the fact that the Regional Board's
28 evidentiary submission was due on March 27, almost two weeks earlier). *Id.* 838:13-
839:7. Mr. Holub had not even begun putting his presentation together and did not know
what will be included. *Id.* 840:7-15. For example, Mr. Holub had not yet decided
whether to present evidence of the following facts:

- The waste discharge requirements for Pyrotronics were
repeatedly violated. *Id.* 839:8-15.

- Mr. Berchtold, who was at the Pyrotronics site in 1983, wrote a report noting a serious overflow violation. *Id.* 839:16-22.
- Records filed by Pyrotronics with the City of Rialto document that it was using over 25,000 pounds of potassium perchlorate on a monthly basis. *Id.* 839:23-840:6.
- The closure of the McLaughlin Pit violated numerous Subchapter 15 regulatory requirements, without any enforcement action by the Regional Board. *Id.* 897:15-898:15.

Even so, certain conclusions are evident from his deposition testimony: (1) Mr. Holub knows that the Regional Board staff and the State of California's treatment of the McLaughlin Pit violated California and federal law; (2) he knows those actions contributed to the perchlorate contamination in Rialto; and (3) in spite of those facts, he knows there are no plans to fully investigate this contamination source or the fault of the individual members of Regional Board staff, including members of the Advocacy Team who nevertheless are serving as prosecutors in this proceeding.

Mr. Holub admits he does not know the extent to which the McLaughlin Pit and the misconduct of the Regional Board is exculpatory evidence of Goodrich and the other parties' alleged liability.

Q. Mr. Holub, isn't it true that the regional board's failure to require compliance with the WDRs, the monitoring program under the Subchapter 15 regulations, and a proper closure is in part responsible for the leakage of material out of the McLaughlin Pit into the groundwater below?

A. I don't know what was left in the pond when it was closed. It may be, may not be. I don't know.

* * *

Q. So since you don't know, as you've testified just a moment ago, what the regional board's responsibility is for leakage of the McLaughlin Pit into the groundwater below -- in other words, had it enforced the regulations that were in place -- how come you're not raising that with the State Board to that's exculpatory of my client and Black & Decker?

MS. NOVAK: Same objections.

THE WITNESS: I don't know the relevance in determining whether the three parties named in the draft amended order discharged waste that impacts the state.

1 Q. You don't know one way or another. That's what you testified
2 to; right? You don't know one way or another?

3 A. I guess so, yes.

4 Q. In other words, you don't know; correct?

5 A. Yes.

6 *Id.*, 899:22-900:4, 901:5-24.

7 Mr. Holub deposition testimony also reveals his and the Regional Board's failure
8 to fully investigate the McLaughlin Pit, both in the past and still to this day.

- 9 • Mr. Holub does not know whether Pyrotronics discharged
10 "hazardous waste" into the McLaughlin Pit. For example, he
11 does not know whether Pyrotronics' "K waste" qualified as
12 "hazardous" under EPA's hazardous waste classification
13 regulations because he is not at all familiar with those
14 regulations. *Id.*, 840:17-847:18. He also does not know
15 whether it was hazardous waste under other state
16 regulations, including Section 66300 of Title 22. *Id.*, 848:12-
17 850:5.
- 18 • Despite having information from Pyrotronics identifying
19 material in the McLaughlin Pit as hazardous wastes going
20 back to before 1984, the Regional Board did not classify the
21 facility as a Class I impoundment. *Id.*, 853:3-856:2.
- 22 • Mr. Holub did not recall the Regional Board contacting the
23 Department of Toxic Substances Control (or a predecessor
24 entity) to inform it that Pyrotronics operated a hazardous
25 waste pit, even as part of closing the facility and he had no
26 explanation for failing to involve DTSC. *Id.*, 856:3-857:11,
27 889:3-891:2.
- 28 • In 1986, Mr. Holub was aware of regulations that required
ground and surface water monitoring as part of the closure
requirements for surface impoundments such as the
McLaughlin Pit, which would have included monitoring for
perchlorate. He even cited these requirements in letters to
Pyrotronics and participated in "the early stages of getting the
work plan submitted" for the closure. But there was never
compliance and the Regional Board took no enforcement
action, contrary to its legal responsibility:

29 Q. Who was the agency in [the] state of California who was
30 responsible for making sure they shall do what they're
31 required to do here; that is, undertake the monitoring
32 program?

33 A. The regional board has that jurisdiction.

34 * * *

1 Q. So now let's look at the verification monitoring program.
2 That's section 2557. [¶] Now, if the Regional Board had
3 classified the facility as a Class I facility, right? In other
4 words, because it had hazardous waste in it, and required the
5 monitoring program, which then turned up some of the
6 constituents that were in the pond, then Apollo would have
7 been required to sample for the constituents identified in
8 appendix three. [¶] You'd agree with me, right?

9 MS. NOVAK: Incomplete hypothetical. Lacks foundation. Calls for
10 speculation. May also calls for a legal conclusion.

11 MR. ELLIOTT: Join.

12 A: If the regional board classified it, I don't know necessarily
13 know it would be classified as a Class I unit. But if it was,
14 then what you said would be correct.

15 Q. And if that were the case, then they would have been
16 required to sample for potassium perchlorate regardless of
17 what they told you; correct, sir?

18 MS. NOVAK: Same objections.

19 MR. ELLIOTT: Join.

20 A: I believe so.

21 *Id.*, 870:8-12, 872:24-873:23, 857:13-874:6.

- 22 • He has not investigated how much of the perchlorate
23 contamination in Rialto would have been prevented if the
24 Regional Board had enforced these monitoring requirements.
25 *Id.*, 874:21-876:8.
- 26 • He does not know how much of the perchlorate
27 contamination in Rialto is from the McLaughlin Pit, but he
28 does "believe" some perchlorate leached into the Rialto
groundwater. *Id.*, 876:13-877:1, 883:16-21. He later
conceded it is a "confirmed source" of contamination at the
160-acre parcel. *Id.*, 1008:1-6.)
- He does not know whether the discharges of large amounts
of water through the McLaughlin Pit caused a "mounding
effect" on the groundwater beneath the area, or whether such
an effect impacted cross-gradient wells. *Id.*, 987:25-988:18.
- Despite these concerns and unanswered questions, he has
not considered doing any additional investigation to
determine the magnitude of impact of discharges from the
McLaughlin Pit on the 160-acre parcel and downgradient
from the site. *Id.*, 877:9-878:3.
- The closure of the McLaughlin Pit violated several other
mandatory legal requirements, without any enforcement by

1 the Regional Board even though, again, this fell under its
2 legal responsibility. Mr. Holub either confirmed these facts or
3 did not know whether compliance occurred. *Id.*, 884:14-
4 888:25, 891:5-895:5.

- 5 • Since becoming aware of these violations, the Regional
6 Board has taken no action to require the proper closure of the
7 McLaughlin Pit, despite not knowing whether it remains a
8 source of perchlorate contamination to the ground surface
9 below it. *Id.*, 895:12-897:14.

10 Mr. Holub's testimony and other evidence of the liability of the Regional Board,
11 and the personal involvement of Mr. Holub and other members of the Advocacy Team,
12 calls into significant question their motives and prosecutorial conduct in these
13 proceedings. The integrity of these proceedings requires a full exploration of these
14 issues, especially if Mr. Holub and the rest of the Advocacy Team elect not to discuss
15 them voluntarily, before any conclusion can be made about Goodrich or any other party's
16 alleged responsibility for any contamination.

17 **5. Data and Findings regarding TCE and Perchlorate discharges**
18 **at and from the Property, and Impacts of Perchlorate and TCE**
19 **on the Municipal Water Supply**

20 Mr. Holub testified that all he intends to present on these subjects are data,
21 including principally the analytical results from soil and groundwater sampling results, but
22 he does not intend to offer a scientific conclusion or opinion as to the sources of any of
23 the contamination (except for the McLaughlin Pit because that is a confirmed source) or
24 the migration of any contamination. *Id.*, 989:17-1008:23, 1009:25-1024:19. This further
25 supports the conclusion that the available evidence does not establish that Goodrich is
26 responsible for any of the perchlorate or TCE contamination.

27 Mr. Holub's testimony will not include any evidence concerning "waste discharged
28 by Goodrich", or the other parties named in the Order. Mr. Holub is not addressing those
29 issues, despite previous representations to the contrary. *Id.* 803:16-804:1, 804:2-17,
30 809:1-10. This change in course is appropriate because, in fact, Mr. Holub lacks the
31 necessary expertise and knowledge to address these subjects.

32 For example, Mr. Holub lacks expertise in the fate and transport issues necessary

1 to identify sources of the contamination. He is not an expert in the vadose zone or
2 vadose zone modeling, and neither is anyone else on the Advocacy Team. *Id.*, 939:6-
3 22. He does not know the absorption rate of perchlorate or TCE¹⁶⁴ in the silty materials
4 found on the 160-acre parcel. *Id.*, 943:16-944:2. And he does not know the
5 transmissivity rate, permeability rate, or porosity for the soils on the 160-acre parcel. *Id.*,
6 944:3-11.

7 Mr. Holub also lacks knowledge of Goodrich's operations.¹⁶⁵ He does not know
8 how much perchlorate reached the ground surface from Goodrich's operations; he
9 cannot even provide an estimate to an order of magnitude in pounds. *Id.*, 945:8-19. He
10 also does not know how much waste propellant from Goodrich's operations was burned
11 in the burn pit or how much would remain after the burn (and he knows of no evidence of
12 any other potential source of perchlorate from Goodrich's operations). *Id.*, 948:4-22.¹⁶⁶
13 Mr. Holub concedes that such information is necessary to make any assessment of how
14 much perchlorate came from Goodrich's operations (i.e., to determine a "source term"),
15 yet the Regional Board has never made those calculations. *Id.*, 949:8-950:13.

16 Mr. Holub's lack of knowledge also extends to other potential sources of the
17 contamination. In addition to the failures related to the McLaughlin Pit discussed
18 previously, Mr. Holub admits that the Regional Board has not investigated, and
19 apparently does not plan to investigate, several other potential sources.

- 20 • Mr. Holub has not done any investigation into how much
21 perchlorate found in the Rialto-Colton basin was formed
22 spontaneously, despite acknowledging that this occurs. (*Id.*,
23 836:11-15.)

24 ¹⁶⁴ Mr. Holub is not an expert in TCE at all. Holub Dep., 909:23-25.

25 ¹⁶⁵ Mr. Holub does not know about the other defendants' operations either. See, e.g.,
Holub Dep., 1072:13-18.

26 ¹⁶⁶ Mr. Holub does know that the one burn pit identified at the Goodrich facility was
27 covered with concrete and a building in 1987, which means that the amount of water
28 percolating and potentially carrying any remnant waste into the groundwater is "basically
zero" for vertical migration and the conditions are not conducive to significant horizontal
migration. Holub Dep., 957:8-960:11.

- 1 • He is aware of but has not investigated the Rialto Ammunition
2 Backup Storage Point (the "RASP") as a potential source of
3 contamination. *Id.*, 902:14-24, 987:11-15. He knows that the
4 RASP area covers the 160-acre parcel (and more areas). *Id.*,
5 911:2-7. But his limited knowledge does not include, for
6 example, what kind of munitions were used, how much
7 perchlorate-containing materials passed through the RASP
8 area, the operation of a sludge pond at the facility, what was
9 done with munitions damaged on route to the RASP
10 (including how much was burned throughout the RASP area,
11 deposited in the sludge bed, or discharged to the ground
12 surface in ditches), or how much TCE was brought to the
13 RASP area (e.g., from nearby Camp Anza) for various uses
14 including repairs and degreasing. *Id.*, 903:5-909:10, 911:9-
15 914:14.
- 16 • He is aware of government facilities that have discharged
17 TCE and contaminated groundwater (e.g., Norton Air Force
18 base), but has not fully investigated such potential sources in
19 Rialto. *Id.*, 914:15-917:16. Mr. Holub conceded, "[w]e have
20 not undertaken any additional investigation other than this
21 pending inadequate response [from the Department of
22 Defense] that we're trying to get more information on." *Id.*,
23 917:23-918:4. In fact, no action has been taken since the
24 Regional Board received the "inadequate response" at least
25 "a couple of years" ago. *Id.*, 917:6-16. As a result, he cannot
26 determine whether any positive sample for TCE at the 160-
27 acre parcel, either in soil or water, was the result of the
28 United States government's activities at the RASP. *Id.*,
920:14-921:5.
- He knows of many other companies that operated in the area
of the 160-acre parcel that used unidentified hazardous
materials, but have not been fully investigated for their
potential use or disposal of TCE or perchlorate, or their
potential contribution to the groundwater contamination. *Id.*,
922:2-930:24. For example, there has been no investigation
into Pyrotronics' use and disposal of TCE or perchlorate, or
how those activities contributed to the contamination. *Id.*,
963:3-968:1, 971:11-983:3, 985:7-986:12, 987:17-20.

For all of these reasons, Mr. Holub admits having no basis to conclude that Goodrich, the Emhart Entities, or Pyro Spectaculars is a source of any of the perchlorate or TCE contamination:

Q. With respect to all of these wells that have shown at any time concentrations of trichloroethylene, you cannot tell me on any particular sample that's been taken what the source is of that trichloroethylene from the various operations over time that we've talked about that overlay the basin; is that correct?

A. Correct.

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Q. And the same thing would be true with respect to perchlorate; isn't that right, sir?

A. There's no direct evidence, yes, I'm sorry.

* * *

Q. You can't tell me with respect to any well that's located in the Rialto-Colton basin anywhere on this map that has shown concentrations of perchlorate, positive concentrations, whether that perchlorate comes from any particular operation; is that correct?

A. Yes.

* * *

Q. With respect to PW-5, okay, the well right in the middle of the basin; right?

A. Yes.

Q. You can't tell me whether PW-5, if it has perchlorate in it at any particular time, whether that perchlorate came from Goodrich or some other operation; correct?

A. Correct.

Q. And the same thing is true with respect to Black and Decker or its alleged predecessor West Coast Loading, you can't tell me whether or not perchlorate that's in PW-5 came from that operation; isn't that right?

A. Correct.

Q. And the same true is Pyro Spectaculars, you cannot tell me whether or not perchlorate that's found in PW-5 at any time was as a result of Pyro Spectaculars' operations; is that right?

A. Correct.

Q. And if I was to ask you that question with respect to each of those operations for each of the wells located on this Exhibit 4256, you would agree you cannot tell me, could you?

A. I could not link the perchlorate in PW-5 to any specific operations.

Q. No. [¶] I'm saying with respect to any of the wells on this map, you can't link it to any particular operation, can you, sir?

A. Not conclusively.

1 Q. You can't say one way or another. , You don't know whether
2 or not PW-2, which is on the 160-acre parcel that shows
3 perchlorate concentrations, that's coming from the RASP
4 operation, do you?
5 A. No.
6 Q. You don't know whether or not the PW-2 has any perchlorate,
7 any perchlorate that comes from Goodrich's operations, do
8 you?
9 A. Not conclusively, no.
10 Q. You can't say that. [¶] You can't say whether PW-2 has
11 perchlorate coming from the West Coast Loading operations,
12 can you?
13 A. There's no data to indicate.
14 Q. There's no data to indicate Pyro Spectaculars, Goodrich, or
15 West Coast Loading; isn't that right, sir?
16 A. Yes.
17 Q. And the same is true for every single well on this map; isn't
18 that true?
19 A. Yes.
20 Q. Yes. [¶] And the same thing is true of every soil sample
21 that's been taken that's located anywhere on this map; isn't
22 that right, sir?
23 A. You're not asking my opinion. You're asking --
24 Q. I'm asking -- I mean, soil samples taken from the 160-acre
25 parcel, you already testified, could have perchlorate in them,
26 and it could be solely as a result of the McLaughlin burn; right?
27 A. Theoretically.
28 Q. Theoretically? [¶] You saw the plume of smoke that was
coming off that facility for hours; right?
MS. NOVAK: Objection. Assumes facts not in evidence.
Lacks foundation.
MR. DINTZER: No. [¶] He did. I showed him pictures of it.
THE WITNESS: I saw the pictures.
MS. NOVAK: Okay.
MR. DINTZER: Yeah.

- 1 Q. I mean, you can't tell me whether or not soil samples taken
2 from the 160-acre parcel come from the McLaughlin burn, can
3 you?
- 4 A. No.
- 5 Q. No. [¶] And from Pyrotronics' washouts, you can't tell me
6 that either, can you?
- 7 A. No.
- 8 * * *
- 9 Q. With respect to trichloroethylene or perchlorate in soil or
10 groundwater anywhere in this basin, you cannot tell me what
11 the source of either of those constituents is in soil or
12 groundwater anywhere in this basin, can you?
- 13 A. No.
- 14 * * *
- 15 Q. You can't testify, can you, sir, that Goodrich's perchlorate
16 discharge at the site as you allege in your CAO, draft CAO,
17 ever made it to groundwater, can you?
- 18 A. I don't have evidence that shows that.
- 19 Q. Well, that's what we're here about. We're here about the
20 evidence. [¶] And the same thing would be true West Coast
21 Loading, you don't have any evidence that anything they
22 discharged onto the ground vis a vis perchlorate got into the
23 groundwater, do you?
- 24 A. No.
- 25 Q. ... And you don't have any evidence that anything that Pyro
26 Spectaculars handled vis a vis perchlorate ever got into the
27 groundwater either, do you?
- 28 A. No.
- Q. In fact, with respect to all three of alleged dischargers, you
don't even know as you sit here whether or not perchlorate
from any of their operations is within a hundred feet of
groundwater, do you?
- A. I don't know.
- Q. There's no evidence that Goodrich's discharge at that site is
anywhere within a hundred feet of the groundwater; right?
- A. Correct.
- Q. And the same thing is true of West Coast Loading?

1 A. Correct.

2 Q. And the same thing is true of Pyro Spectaculars?

3 A. Correct.

4 *Id.*, 932:20-937:13, 955:8-956:16 *also id.*, 951:13-955:7, 983:5-985:2, 988:20-989:2.

5 Moreover, Mr. Holub does not point to any additional investigation that is
6 necessary for Goodrich to establish that any remaining waste perchlorate (i.e., any
7 perchlorate ash from the burning of the propellant) or TCE is not in the groundwater or
8 even within a hundred feet of groundwater. *Id.*, 960:14-21, 961:24-962:10.¹⁶⁷

9 In summary, whatever "data and findings" related to perchlorate and TCE Mr.
10 Holub intends to discuss at the hearing does not provide a basis for assigning any
11 liability to Goodrich or the other accused parties.

12 **C. Ann Sturdivant**

13 Showing her obvious biases against Goodrich, Sturdivant selected testimony from
14 a single former Goodrich employee while ignoring contradictory testimony provided by
15 this same witness. In drafting the section on Goodrich in the Memorandum of Points and
16 Authorities, Sturdivant relied "upon Mr. Ronald Polzien's deposition testimony [more]
17 than any other witness that you have presented with respect to Goodrich" *Id.*, 289:22-
18 290:1. In general, citing to a particular witness numerous times is not problematic so
19 long as the witness provides consistent testimony and testifies on issues on which he
20 has personal knowledge. But this was not true with respect to Mr. Polzien. Sturdivant
21 liberally cited to Mr. Polzien despite the internal inconsistencies in Mr. Polzien's
22 testimony, the lack of Mr. Polzien's personal knowledge on the subjects to which he was
23 testifying, and the numerous other witnesses who contradict Mr. Polzien's testimony.

24 Although Polzien directly contradicted himself on numerous occasions, Sturdivant
25 relied on the contradicted testimony that supported the Regional Board staff's case
26 against Goodrich. For instance, Mr. Polzien signed a declaration and provided

27 ¹⁶⁷ The same is true with regard to the Emhart Entities' use and disposal of perchlorate
28 and TCE, and Pyro Spectaculars' use and disposal of perchlorate. *Id.*, 960:23-962:10.

1 deposition testimony about a conversation that he had with Archie Japs, a technical
2 manager at the Goodrich facility, in which Polzien detailed his concerns that solvent
3 contamination would enter the drinking water supply downgradient from the Goodrich
4 facility. *Id.*, 300:14- 304:17. Three years following his conversation with Mr. Japs, Mr.
5 Polzien sold his house that was located downgradient from the Goodrich property, but
6 he did not disclose his concerns to the buyers because "if I had really been concerned, I
7 would have notified them." *Id.*, 306:13-307:15. When presented with this contradictory
8 evidence, Sturdivant concluded that she could not judge the testimony's truthfulness
9 because she was not present at Mr. Polzien's deposition.

10 Q. Do you understand that Mr. Polzien's testimony in the first
11 instance or in the second instance, one or the other, is false?

12 A. I don't know that.

13 Q. One of them has to be untrue, we agree on that; right? He
14 either was concerned or he wasn't concerned; correct?

15 A. That's how it appears.

16 * * *

17 Q. Is there any question, Ms. Sturdivant, in your mind, that Mr.
18 Polzien made a false statement, one way or the other?

19 A. I wasn't there in the deposition.

20 Q. You weren't there. So you can't judge whether or not, from
21 reading the text that I just went through with you, whether this
22 man made false statements under oath?

23 A. That's correct.

24 308:8-15, 309:16-24.

25 Whether the testimony is true or false is irrelevant to Ms. Sturdivant. As long as
26 the testimony supported her preordained conclusion that Goodrich caused perchlorate
27 contamination, Sturdivant cited to it.

28 It is clear from the testimony of Ms. Sturdivant, a member of the Advocacy Team,
that the Advocacy Team, with the help of "other parties," "picked and chose" favorable
testimony from Mr. Polzien's deposition transcript, while ignoring other contradictory

1 evidence:

2 Mr. Dintzer: Okay. You picked and chose from Mr. Polzien's
3 testimony things that you liked to see in there because you thought
4 it was helpful to your Memorandum of Points and Authorities, and
5 you ignored testimony that Mr. Polzien gave that was contradictory;
6 isn't that true?

7 [Objections omitted]

8 Mr. Dintzer: Go ahead, you can answer.

9 Ms. Sturdivant: I didn't pick and choose all of the testimony myself; I
10 had assistance from other parties.

11 Sturdivant Dep., 671:19-672:7.

12 In another section of the Points and Authorities, Sturdivant cited to Polzien's
13 testimony, even though Polzien later contradicts it. On direct examination, Polzien's
14 testified that Goodrich rinsed the test bay. See Ad. Team P&As, 75. On cross-
15 examination, however, Polzien contradicted the testimony cited by Ms. Sturdivant.

16 Q. Okay. Let's see what he said in cross-examination on that
17 subject, okay. Page 297, pages -- lines 15 through 16, okay.
18 This is the question: "Was water utilized in the test bay area?"
19 "Answer: I have no recollection of water being used." You
20 see that?

21 A. Yes.

22 Q. Well, you would agree with me that those two pieces of
23 testimony are in conflict, wouldn't you?

24 A. You could consider it possible.

25 *Id.*, 320:6-17. Sturdivant ignored the possibility that Polzien contradicted his
26 testimony, and instead she cited to Polzien only when it supported the staff's case
27 against Goodrich.

28 In another section of the Points and Authorities, Sturdivant cited to Polzien's
29 testimony in support of the staff's position that the Goodrich facility used TCE, even
30 though later in his deposition, Polzien admitted that he did not know whether the solvent
31 used to clean mixers was trichloroethane or trichloroethylene.

1 Q. All right. Now let's look at what happened in cross-
2 examination a little bit later on after we had a little discussion
3 about the chemical trichloroethane. Turn the page to page
4 619, line 13. "Question: Do you know whether or not the
5 cleaning solvent that they used in the mixers and the other
6 places where they had this solvent was trichloroethane or
7 trichloroethylene? "I don't." Continuing on line 1, page 620,
8 "Do you know whether the solvent that made part of the slurry
9 was trichloroethylene or trichloroethane? "Answer: In light of
10 what you just told me and my ignorance between the two, I
11 don't know." Now, you see, Ms. Sturdivant, Mr. Polzien has
12 just admitted in his deposition that he gave false testimony
13 previously concerning whether or not trichloroethylene was
14 used at the facility because he doesn't know whether it was
15 trichloroethylene or it was another chemical called
16 trichloroethane. You see that?

17 * * *

18 THE WITNESS: I see the text of the deposition, yes.

19 MR. DINTZER:

20 Q. You see what I just said is true; right?

21 MS. NOVAK: Objection -- Same objections.

22 THE WITNESS: I read the same text that you do.

23 MR. DINTZER:

24 Q. Now, you think that it's responsible, Ms. Sturdivant, to be
25 relying upon the deposition of a person who over and over
26 and over again testifies to one thing and then says something
27 different? Do you think that that's responsible?

28 A. I think it's responsible to take the testimony that the man
gave under oath.

Q. Well, he says under oath here at the end of his deposition,
when he's under cross-examination, that he doesn't know
which chemical it was. That's what he says. But yet he
testified over and over and over again in his depositions and
in his declaration that trichloroethylene was utilized. But
when it came to cross-examination, it was a different matter
altogether. And my question to you is, you've seen
contradictions in this man's testimony. Do you think it was
responsible for you to rely so heavily upon the deposition
testimony of an individual who can't keep his story straight?

MS. NOVAK: Objection. Argumentative. You may answer.

THE WITNESS: I think it's responsible to review these and do the
best we can to summarize what's here.

1 *Id.* 344:24-347:6

2 Ms. Sturdivant is wrong – a responsible prosecutor does not pick and choose
3 evidence that supports a prosecutive theory while ignoring other testimony that
4 undermines that same theory.

5 Sturdivant disregards the testimony of all former Goodrich employees, even that
6 of Mr. Polzien, when it undermined a particular contention against Goodrich. For
7 example,

- 8 • Sturdivant admitted that every single former Goodrich
9 employee, including Mr. Polzien, testified that Goodrich
10 operated a single burn pit. *Id.* 333:7-22, 692:24-693:25. Yet,
11 the Regional Board alleges that there were two burn pits.
- 12 • Sturdivant did not recall a single witness that testified that
13 water was routed to the burn pit. *Id.* 739:11-740:25. Yet, the
14 Regional Board alleges that there was water routed to the
15 burn pit.

16 In addition to misrepresenting the facts in this State Board proceeding, Sturdivant
17 misrepresented the facts and misled Senator Soto about the status of the staff's
18 investigation. Beginning in April 2002, the Regional Board staff members who were
19 investigating the source of the perchlorate contamination in the Basin knew the exact
20 location of a waste pit where certain fireworks manufacturers dumped their perchlorate-
21 contaminated pyrotechnic waste and where a large burn had occurred. *Id.*, 533:10-
22 534:4. Notwithstanding this evidence, Sturdivant drafted a letter in June 2002 to Senator
23 Soto that stated that the staff is "not aware of any other facilities in the vicinity of the site
24 that have been identified as having used perchlorate." Ex. 3944. Sturdivant testified
25 that she did not remember reviewing this critical evidence before the letter was mailed.
26 *Id.*, 536:22-537:6. And even now, Sturdivant is not troubled that the letter contained
27 material misrepresentations:

- 28 Q. Do you think it's troubling that the regional board staff issues
an order to Kwikset and Goodrich Corporation based upon a
one-and-a-half-page document that you can't even verify the
source of from the Rialto Historical Society -- this is a
Cleanup and Abatement Order – and at the same time the
executive officer, same person who signs that order, is telling
a senator, who's making inquiry about other potential

1 sources, that he's not aware of any other information when
2 he's got in his staff's files a report that shows that for years
3 and years and years there was fireworks manufacturing going
4 on and that they burned the waste up there?

5 A. The question is?

6 Q. Is that troubling to you?

7 A. I don't know.

8 *Id.*, 537:7-20.

9 The June 2002 letter, initially drafted by Sturdivant, contained other material
10 misrepresentations, including:

- 11 • In response to question number 6, the Regional Board staff's
12 letter states, "This is because the preliminary information we
13 have indicates that these facilities may not likely be sources."
14 Ex. 20058. But this statement is categorically false and
15 contradicted by material in the Regional Board's own files.
16 *Id.* 538:4-539:1.
- 17 • In response to question number 6, the Regional Board staff's
18 letter states that "pyrotechnic tenants that operated It appears
19 that the pyrotechnic tenants that operated at the site were
20 involved primarily with the import, assembly, storage and
21 shipping of fireworks, and not necessarily the manufacture of
22 fireworks, which is the type of activity that likely would have
23 resulted in a release of perchlorate." Ex. 20058. But this
24 statement is categorically false and contradicted by material
25 in the Regional Board's own files. *Id.* 539:13-540:21.

26 When confronted with these obvious inconsistencies, Sturdivant defended the letter by
27 claiming, "I don't think that the executive officer provided false information intentionally."
28 Even if the Regional Board staff investigating the perchlorate contamination did not
deliberately misrepresent the evidence in its possession – and the amount and
frequency of the misrepresentations suggest more than mere coincidence or harmless
error – the volume of "false information" provided by the Regional Board staff, and Ms.
Sturdivant particularly, tarnishes its reputation and undermines the credibility of the
Advocacy's Team's witnesses, including Ms. Sturdivant.

Ms. Sturdivant's deposition testimony reveals that she has no expert knowledge
on all of the technical issues, including perchlorate and its fate and transport, about
which she is scheduled to testify. The April 6, 2007 Advocacy Team's submission states

1 that Ms. Sturdivant plans to testify on the (1) solubility and mobility of potassium
2 perchlorate and (2) infiltration of contaminants, including perchlorate salts, into the soil
3 and groundwater. At deposition, Sturdivant testified that she lacks expertise in
4 perchlorate, fate and transport of contamination in groundwater, groundwater modeling,
5 and vadose zone modeling. *Id.*, 261:8-262:3, 271:14-272:3. Sturdivant has never
6 testified before as an expert in hydrogeology in a judicial proceeding, as she has no
7 peer-reviewed publications related to hydrogeology, has never presented on the subject
8 of hydrogeology in a conference amongst experts, and has never qualified as an
9 associate professor or professor at a university, college, or junior college. *Id.* 274:3-
10 276:1. Without the technical expertise on issues, such as perchlorate and fate and
11 transport, Sturdivant lacks the requisite expertise to provide testimony to the State Board
12 on these same issues.

13 In addition to not being an expert witness, Sturdivant lacks any personal
14 knowledge to testify about the mobility of perchlorate.

15 Q. Would you need to know the sorption rate of perchlorate in
16 silty material in order to understand how quickly the material
17 would move from the surface to the groundwater at the 160-
18 acre parcel?

19 A. The sorption rate --

20 Q. Yes.

21 A. -- or solubility?

22 Q. Sorption rate of perchlorate to soil.

23 A. I don't know.

24 Q. You don't know one way or another?

25 A. Right.

26 *Id.*, 627:1-11.

27 * * *

28 Q. You've made no calculations whatsoever with respect to the
transport rate of perchlorate from the surface down to the

1 groundwater at the 160-acre parcel as a result of natural
2 recharge, rain; right?

3 A. Correct.

4 Q. How long does it take for perchlorate to move through the
5 unsaturated zone at the 160-acre parcel as a result of
6 rainfall?

7 MS. NOVAK: Calls for speculation, may call for expert
8 opinion. You may answer.

9 THE WITNESS: I don't know specifically.

10 MR. DINTZER:

11 Q. So you don't know the rate by which perchlorate would move
12 through the unsaturated zone at the 160-acre parcel as a
13 result of rainfall solely; is that correct?

14 A. As a result of what?

15 Q. Rainfall solely.

16 A. Right.

17 *Id.*, 629:23-630:18

18 Sturdivant lacks the personal knowledge to testify on the solubility of
19 contaminants, such as ammonium perchlorate. Without the personal knowledge or the
20 technical expertise, Sturdivant's testimony, is purely hearsay and is not credible.

21 Consistent with her lack of knowledge and expertise, Ms. Sturdivant concedes
22 she cannot establish that any groundwater contamination originated from Goodrich.

23 Q. So on any given day, at any sample that's taken from this
24 basin, when you actually take the sample and you look at the
25 data, and if you see perchlorate or you see trichloroethylene,
26 you can't say under oath that that TCE or perchlorate came
27 from any particular operation versus another one, can you?

28 A. In the water?

Q. Yes.

A. Probably not.

Id., 627:1-11.

Likewise, Ms. Sturdivant concedes she cannot connect any measurement of
perchlorate or TCE in soil to any particular operation.

1 Q. So if I was to take a sample, for example, up near 5 or 4 or 9 or 2,
2 and I got a soil sample that had some perchlorate in it, could
3 you tell me whether or not that perchlorate did or did not come
4 from burns of "Pyrotronic" waste by Pyrotronics or other
5 fireworks manufacturers down here in Area 13?

6 A. It would depend on what else you found when you found those
7 detections. If you could describe the waste and knew
8 something about the waste, then you may be able to identify
9 the waste better.

10 * * *

11 Q. Okay. So I'm talking about any individual sample that shows
12 perchlorate in it, you can't tell me whether that came from that
13 burn or one of those burns or not; right?

14 A. As I say, depending if it had other material in it and you knew
15 more about the sample itself.

16 Q. Okay. Well, assuming that it's just perchlorate in the soil, can you
17 tell me whether it came from that burn or not?

18 MS. NOVAK: She's asked and answered the question.

19 A: Know -

20 Q. Go ahead.

21 MS. NOVAK: You can answer it again.

22 A: Knowing why you selected a sampling location and what you
23 found there, if there was nothing in it but soil and no waste
24 material, then you couldn't specifically, to my knowledge, not
25 that I know.

26 Q. Tell one way or another?

27 A. Correct.

28 * * *

Q. Okay. So if you take a soil sample from the 160-acre parcel and
you find some level of trichloroethylene in it, you don't know
one way or another whether that trichloroethylene came from
Pyrotronics' operations or from somebody else's operations; is
that correct?

A. Based upon where the sampling was done, we might have a
better way of relating it to the information.

Q. Well, you know, if people are using this facility for all kinds of
different purposes for 50 years, you don't know whether or not
a sample that has trichloroethylene in it came from
Pyrotronics' operations, from the United States of America,

1 from any operation that's been out there particularly; right?
2 You just know that the sample has trichloroethylene in it?

3 A. Yes.

4 *Id.*, 646:20-647:4, 649:2-22, 651:17-652:9

5 Ms. Sturdivant's failure to voluntarily bring this exonerating information to the
6 State Board's attention demonstrates that she has failed to serve as a responsible and
7 objective prosecutor in these proceedings.

8 **D. Kamron Saremi**

9 Kamron Saremi is not an expert in any sense of the word. As a Water Resources
10 Control Engineer, Saremi admits that he could not qualify to testify as an expert witness
11 about perchlorate infiltration or plume boundaries, but he intends to testify in this
12 administrative proceeding on both of these subjects anyway. Based on the paucity of
13 evidence that he discovered from 1997 to 2002, Saremi lacks any expertise in
14 conducting investigations. Although Saremi was tasked by the Regional Board to
15 investigate the causes of perchlorate contamination in the Rialto-Colton basin, Saremi
16 failed to uncover meaningful evidence about the historical use of the 160-acre site, and
17 he misrepresented a critical 2002 audit report that identified the companies responsible
18 for the only confirmed source of perchlorate contamination in North Rialto. Adding insult
19 to injury, Saremi plans to testify in this proceeding about an investigation tarnished by his
20 faulty assumptions and critical errors in judgment. Saremi is not a credible witness, and
21 his conclusory judgments about Goodrich and the companies that are truly responsible
22 for the perchlorate contamination raise doubts about whether his testimony is motivated
23 more by a company's ability to pay, rather than the truth about who actually caused the
24 perchlorate contamination in the Basin.

25 At the outset of his investigation, Kamron Saremi identified Goodrich as a
26 potential source of perchlorate and ignored all others. In 1997, Regional Board tasked
27 Saremi to initiate an investigation concerning perchlorate contamination in the
28 groundwater in the Rialto-Colton area. Saremi Dep., 72:6-20. For the first five years,

1 Saremi did not obtain a single document from the Regional Board's files, and he never
2 once drove to the 160-acre site. *Id.*, 85:8-87:5, 101:9-14. Until 2002, the fruits of
3 Saremi's investigation consisted of a single document from the Rialto Historical Society,
4 only a page and a half of which identified Goodrich as operating a rocket manufacturing
5 facility in North Rialto. *Id.*, 475:9-21. Nevertheless, this document, the contents of which
6 were never verified, became the basis for the Regional Board naming Goodrich in its
7 CAO in 2002.

8 Based on the document from the Rialto Historical Society, Saremi incorrectly
9 assumed that Goodrich contaminated the groundwater just as other rocket manufactures
10 in southern California were accused of doing. Saremi knew that Lockheed Martin, which
11 operated a rocket manufacturing facility in Mentone, California, was cited for causing
12 perchlorate contamination in the groundwater in and around Redlands. Because both
13 facilities manufactured rockets, Saremi believed that Goodrich's facility was the likely
14 cause for perchlorate contamination in the Rialto-Colton basin. But Saremi lacked a
15 basic understanding of either the Lockheed Martin facility in Redlands or the Goodrich
16 facility in Rialto in order to draw a comparison. In his deposition, Saremi testified that he
17 did not know:

- 18 • the amount of rockets manufactured at the Lockheed Martin
19 facility. *Id.*, 235:2-6.
- 20 • the volume of perchlorate handled at the Lockheed Martin
21 facility. *Id.*, 235:7-9.
- 22 • the percentage of rockets manufactured at the Lockheed
23 Martin facility with ammonium perchlorate. *Id.*, 237:11-238:1
- 24 • whether Lockheed Martin and Goodrich had a similar protocol
25 related to the grinding, blending, and drying of oxidizers. *Id.*,
26 236:10-21.
- 27 • whether Lockheed Martin and Goodrich handled the
28 movement of soft propellant throughout the facility. *Id.*,
247:22-248:4
- whether Lockheed Martin and Goodrich utilized similar
methods and tools to clean mixers. *Id.*, 248:7-249:4.

1 In response to a question about whether he knew in June 2002 anything about the
2 similarities and dissimilarities between the two facilities, Saremi answered, "I didn't. Not
3 to the detail that you're thinking." *Id.*, 249:14-17. Without that level of detail, Saremi
4 cannot credibly draw any comparisons between the two different rocket manufacturing
5 facilities.

6 With the misguided belief that Goodrich caused the perchlorate contamination in
7 the Rialto-Colton basin, Saremi ignored evidence that exonerated Goodrich and that
8 pointed to other companies as the source of the problem. In April 2002 the West San
9 Bernardino County Waster District produced an environmental audit that documented all
10 of the various operators that handled perchlorate in the North Rialto area. The audit
11 reported that numerous fireworks companies, while operating on the same land that
12 Goodrich occupied years earlier, handled perchlorate, had explosions, and responded to
13 emergencies and fatal accidents, that obviously involved the mismanagement of
14 oxidizers, such as perchlorate, and the release and discharge of those compounds into
15 the groundwater. The audit also identified a waste pit where certain fireworks
16 manufacturers dumped their pyrotechnic waste and recommended further investigation
17 of the potential source. Saremi testified that he read the audit, and he spoke with Ann
18 Sturdivant and Gerald Thibeault about its contents. *Id.*, 102:20-103:12, 106:14-107:6.
19 Based on his conversations with Saremi, Gerald Thibeault drafted an email to the
20 Regional Board Members on June 11 which stated that "Kamron believed that the
21 information in the audit added very little to what he already knew." Ex. 20074, p. 2.
22 Thibeault's email continues: "information to date indicates that these were just fireworks
23 assembly companies, and that no actualy [sic] manufacturing took place where
24 perchlorate-containing liquids would have been present." *Id.* Both sentences in
25 Thibeault's email to the Regional Board are false – as the Regional Board's own files
26 clearly demonstrate. Upon questioning, Saremi testified that at the time Thibeault wrote
27 the email, Saremi knew that information in the audit contradicted Thibeault's summary to
28 the Board Members. *Id.*, 117:12-123:12. If Saremi's deposition testimony is to be

1 believed, Saremi misrepresented critical evidence that exonerates Goodrich and
2 supports the company's claims that it was not the cause of perchlorate contamination in
3 the Basin. Saremi's testimony implies that the Regional Board's staff steered the
4 Regional Board away from evidence in their own files that pointed directly at the
5 McLaughlin Pit as the key source of the contamination and the staff's embarrassing role
6 in mismanaging the source over two decades.

7 Although the West San Bernardino County Water District's environmental audit
8 report provided Saremi with a crucial lead in his investigation into the source of
9 perchlorate contamination, Saremi failed to conduct any follow-up. The audit report
10 identified that Pyrotronics, a fireworks manufacturer, operated a Class I hazardous waste
11 surface impoundment on the 160-acre site. Despite this critical evidence, Saremi
12 testified that he never even went to the Regional Board's catalogue to see if the Board
13 issued Pyrotronics a Waste Discharge Requirement ("WDR"). *Id.*, 268:21-269:7.
14 Because he failed to look for the WDR, Saremi did not recognize that it allowed
15 Pyrotronics to dump up to 3,000 gallons of water a day into a pool that could not possibly
16 hold that much waste. *Id.*, 310:1-312:12. Saremi never sought out other records from
17 the San Bernardino Valley Municipal Water District, as Goodrich has done, that
18 documented that Pyrotronics used over 10,000 gallons of water a day, an amount, after
19 excluding the water used for manufacturing and sanitation, that was far in excess of what
20 the pit could hold. *Id.*, 316:12-318:1. Saremi does not know how often, if at all,
21 Pyrotronics violated the reporting requirements as mandated by the WDR. *Id.*, 382:17-
22 383:6. And to this day, Saremi does not know whether the closure of the McLaughlin Pit
23 complied with the law. *Id.*, 389:1-390:6.

24 In addition to knowing none of the relevant facts because of his ineffectual
25 investigation, Saremi is also not a technical expert on a subject matter about which he
26 plans to provide testimony. Saremi is not an expert in: (1) geology; (2) hydrogeology;
27 (3) chemistry; (4) groundwater modeling; (5) industrial practices of flare or munitions
28 loading facilities; (6) industrial practices of solid rocket manufacturing facilities; (7)

1 industrial practices of firework manufacturing operations; (8) industrial practices of
2 firework operations; (9) toxicology; (10) epidemiology; (11) medical sciences; (12) the
3 effect that perchlorate or trichloroethylene on the human function; (13) vadose zone
4 transport; and (14) fate and transport of contaminants in the subsurface. *Id.*, 48:14-
5 49:21, 51:17-24. Without the technical expertise on issues, such as plume boundaries,
6 perchlorate infiltration, and rocket manufacturing, Saremi lacks any credibility to provide
7 testimony to the State Board on these same issues.

8 These facts establish that Mr. Saremi decided Goodrich's fault without objectively
9 reviewing all of the relevant evidence. Likewise, he and the rest of the Advocacy Team
10 have overzealously prosecuted Goodrich, with full knowledge that the evidence does not
11 prove that Goodrich is responsible for any contamination found in any groundwater well.
12 As shown below, Mr. Saremi concedes this critical truth only after detailed cross-
13 examination. His unwillingness to freely offer this admission is further evidence of his
14 bias.

15 Q. These wells that are down here that I've mentioned, PW-9, PW-7,
16 PW-6, PW-5, PW-8, these wells that are in this basin, you
17 don't know where the perchlorate that's being seen in those
18 wells originated from, do you, sir?

19 A. I'll make a correction. We do know it's from the 160-acre site.

20 Q. You don't know what industrial operation is responsible for the
21 contamination in those wells; is that true, sir?

22 A. Not specifically.

23 Q. I mean, in other words, you can't tell me whether or not the
24 perchlorate in PW-5 belongs to West Coast Loading or Pyro
25 Spectaculars or Goodrich or Pyrotronics, can you?

26 A. With respect to perchlorate, no.

27 Q. No. [¶] Trichloroethylene either?

28 A. Well, that -- that -- I have a different take on that.

 Q. Okay. Well, let me ask you something: Here you see all of these
 users of the properties in the area in this basin?

 A. Yes.

1 Q. I asked you questions about whether they used perchlorate;
2 right?

3 A. Yeah, I believe you --

4 Q. And trichloroethylene; right?

5 A. Yes.

6 Q. You don't know whether or not their perchlorate or
7 trichloroethylene, to the extent they had any, is in any of these
8 wells, do you?

9 A. I -- I don't.

10 Q. Okay. So let me come back to my question. Okay? [¶] You
11 don't know and cannot tell us with respect to any of the wells
12 in this basin, exclusive of the landfill, what industrial operations
13 are specifically responsible for either perchlorate or
14 trichloroethylene in those wells, can you?

15 A. We have three parties at the 160-acre site, and based on --

16 Q. Sir, focus on my question.

17 A. Yes.

18 Q. You cannot tell us which specific operation is responsible for
19 perchlorate in any of these specific wells, can you, sir,
20 throughout the basin? You can't tell us?

21 A. Yeah, based on available records, probably not.

22 Q. And the same is true of trichloroethylene; right?

23 A. We're generalizing. I -- I got to be --

24 Q. You cannot tell me specifically?

25 A. You have to ask me specific questions.

26 Q. You cannot tell me, with respect to any of these wells that are
27 showing trichloroethylene, where the specific trichloroethylene
28 came from; in other words, which specific operation it came
from, can you?

A. I -- I answer this question earlier. I said the perchlorate and TCE
is coming from 160-acre site.

Q. But you cannot tell me what specific operation is responsible for
TCE or perchlorate in any specific well, can you, sir?

A. If other operation are -- are contributing? [¶] No, I don't.

1 Q. You can't tell me whether or not, for example, in PW-5, the
2 perchlorate is coming from the McLaughlin pit, can you?

3 A. That, I cannot.

4 Q. Okay. I mean, all of the perchlorate in there, you can't tell me
5 whether it's all coming from the McLaughlin pit, can you?

6 A. All I can say, it's coming from the 160-acre site.

7 Q. You can't tell me whether or not all the perchlorate that belongs in
8 PW-5, that's been seen there, is as a result of Apollo's
9 operation of that pit, can you, sir?

10 A. That's correct.

11 Q. Same thing is true of PW-6, PW-7, PW-9; right, sir?

12 A. That is correct.

13 Q. And you can't tell me whether trichloroethylene that's seen in
14 varying concentrations at different places in the basin is as a
15 result of the 160-acre parcel or any of these operations that
16 are up here, that we've listed and discussed yesterday, that
17 come out of the GeoLogic report, can you, sir?

18 A. You're generalizing.

19 Q. You can't say specifically, sir?

20 A. The only thing I can respond is we don't know the contribution
21 from the other facilities, but we do know about the contribution
22 from the 160-acre site.

23 Q. You do not know what the contribution of trichloroethylene is in
24 PW-5 from the 160-acre parcel as opposed to operations from
25 the airport, can you, sir?

26 A. No.

27 *Id.*, 455:22-459:18; see also *id.*, 656:19-24.

28 Mr. Saremi also cannot link any perchlorate soil contamination with any
particular operation. He admits not knowing how much of the perchlorate found in
soil on the 160-acre parcel is the result of the single "extensive burn" of
pyrotechnic waste in the McLaughlin Pit in 1987.

Q. Mr. McLaughlin has testified that there was 52,000 pounds of
pyrotechnic waste in that pit when he burned it as Dan Brown
and the City fire department watched on. Okay?

A. I -- I don't --

1 Q. I'm just telling you that's what he said.
2 A. Okay. If that's what he said.
3 Q. Okay. The documents indicate that that's what the volume was.
4 A. Okay.
5 Q. So 52,000 pounds of pyrotechnic waste containing perchlorate, of
6 course, were burned for hours and hours; right?
7 A. Yeah, it -- it was extensive burn, yeah.
8 Q. How much of the perchlorate that's been found in the soil on the
9 160-acre parcel comes from that burn?
10 MS. NOVAK: Lacks foundation, assumes facts not in evidence, calls
11 for speculation.
12 A: Have no way --
13 MR. TANAKA: Join.
14 MR. SITES: Join.
15 A: I have no way -- I have no way of estimating that.
16 Q. You don't know?
17 A. No.
18 Q. You have no way of knowing what percentage -- what percentage
19 of the samples that have been taken from the 160-acre parcel,
20 since the investigation of that site has gone on, that contained
21 perchlorate in the sample came from that burn?
22 MS. NOVAK: Objection.
23 MR. ELLIOTT: Objection. Asked and answered.
24 MS. NOVAK: It lacks foundation, assumes facts not in evidence,
25 calls for speculation.
26 MR. SITES: (Indicating.)
27 A: I have no way of estimating or knowing.

28 *Id.*, 305:6-19, 307:15-308:13.

An objective and responsible prosecutor would highlight for this State Board that there is not evidence proving that Goodrich is responsible for any of the groundwater or soil contamination in Rialto. But that is not the case here. Mr. Saremi, along with the

1 rest of the "Advocacy Team", plainly has a different and improper agenda.

2 **XIX. ADDITIONAL SUBMISSIONS OF EVIDENCE IN REBUTTAL WILL BE**
3 **NECESSARY**

4 The Second Revised Notice of Public Hearing allows for a rebuttal submission,
5 but the Hearing Officer has placed certain restrictions on any rebuttal, such as:

6 Rebuttal submissions must be limited to **forty pages, single sided,**
7 **double spaced, in Arial 12-point font.** Rebuttal submissions must
8 be received by **Tuesday, May, 1, 2007 at 5:00 p.m.** If any
9 additional documents are submitted as part of the rebuttal, they
must accompany an explanation as to why their need could not
have been foreseen; that explanation shall be part of the forty-page
argument, although the document(s) will not be considered part of
the forty-page limit.

10 The ability to submit this limited rebuttal does not cure the injustice created by (1) the
11 Hearing Officer's *sua sponte* Orders granting the Advocacy Team additional time to
12 submit its evidence, *without any corresponding extension of time for the alleged*
13 *dischargers*, (2) the Advocacy Team's continued failure to comply with the Hearing
14 Officer's Orders, and (3) and the City of Rialto's submission of 25 boxes and a 135 page
15 brief just two business days before Goodrich must submit its case.¹⁶⁸

16 It is simply impossible for Goodrich to respond to the sheer volume of information
17 produced by the City of Rialto just two business days before its submittal is due, let
18 alone within the 19 days before Goodrich must submit its rebuttal. Due process and
19 fairness dictates that after Goodrich has had an opportunity to review and respond to the

20
21 ¹⁶⁸ As the Hearing Officer is aware, Goodrich and the other alleged dischargers have
22 filed several objections to both the Advocacy Team and the City of Rialto's submissions.
23 These objections provide further details regarding the extent of the Advocacy Team's
24 past and current violations and the City of Rialto's submission of 25 boxes and 135 page
25 brief on April 12, 2007 (just two business days before Goodrich's submission was due).
26 See March 29, 2007 Objection to Advocacy Team Submission submitted by of Goodrich
27 Corporation, the Emhart Entities, and Pyro Spectaculars, Inc. ("Objecting Parties"); April
28 2, 2007 Objections to Advocacy Team submission submitted by Objecting Parties; April
3, 2007 Objections submitted by Objecting Parties; April 4, 2007 Objections submitted by
the Objecting Parties; April 5, 2007 Objections submitted by the Objecting Parties; April
10, 2007 Objections submitted by Pyro Spectaculars and joined by Goodrich; April 10,
2007 Objections submitted by Goodrich; April 11, 2007 Objection submitted on behalf of
the Objecting Parties; April 13, 2007 Objection to City of Rialto submissions submitted
on behalf of Objecting Parties. Goodrich hereby incorporates by reference these prior
objections.

1 sheer volume of this information presented against it, Goodrich be permitted to submit
2 additional evidence responding to this evidence. See *Mathews v. Eldridge*, 424 U.S.
3 319, 333 (1976) ("The fundamental requirement of [administrative] due process is the
4 opportunity to be heard at a meaningful time and in a meaningful manner.") (emphasis
5 added); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978) (The notice in
6 an administrative adjudicatory hearing must "apprise the affected individual of, and
7 permit adequate preparation for, an impending 'hearing.'") (emphasis added); *Nightlife*
8 *Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 90 (2003) (Due process
9 "always requires . . . [the] 'constitutional floor' of a 'fair trial in a fair tribunal,' in other
10 words, a fair hearing before a neutral or unbiased decision-maker"), quoting *Bracy v.*
11 *Gramley*, 520 U.S. 899, 904-905 (1997), and *Withrow v. Larkin* 421 U.S. 35, 43 (1975).
12 Because Goodrich has no time to review this evidence before its submission is due on
13 April 17, 2007, this evidence necessarily must be submitted in its rebuttal. Goodrich
14 cannot and should not be expected to "guess" what information the City of Rialto
15 submitted in order to submit this purely "rebuttal" evidence in its initial submission.

16 Moreover, Goodrich cannot be expected to respond to evidence relied upon by
17 the Advocacy Team, but never produced to Goodrich in compliance with the Notice of
18 Public Hearing. Goodrich cannot be expected to be clairvoyant and respond to evidence
19 the Advocacy Team is relying upon, but never produced to Goodrich.

20 In light of this, Goodrich's rebuttal submission will necessarily include additional
21 evidence (both documentary and testimonial) addressing those allegations raised by the
22 City of Rialto and the Advocacy Team.

23 **XX. CONCLUSION**

24 As demonstrated in the preceding brief, the Advocacy Team has not only failed to
25 carry its burden to prove by the weight of the evidence that Goodrich had a discharge to
26 the waters of the state, but the factual and technical evidence overwhelmingly
27 demonstrates that Goodrich has not caused the perchlorate or TCE contamination in the
28 Rialto-Colton Basin. Likewise, there is no legal authority under the Porter-Cologne Act

1 for the State Board to issue Goodrich any order, to say the least given its years of
2 operation predating the statute and work done at the direction of the U.S. government.
3 Rather, the facts which have unfolded through discovery in these proceedings
4 disturbingly reveal that the Advocacy Team and the City of Rialto not only played integral
5 roles in the events leading to contamination from the only proven sources, but did
6 everything in their power to skirt responsibility and take unfair advantage of Goodrich's
7 five years of good faith cooperation. The Draft CAO must be dismissed.

8 Dated: April 16, 2007

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP
GIBSON, DUNN & CRUTCHER, LLP

By: _____

Peter R. Duchesneau
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